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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,175	10/23/2001	David Arthur Kuen	KCC-15,333.1	7822

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/038,175

Applicant(s)

KUEN ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-39 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5.2 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 14-27 in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out any errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 12/23/02 references an incorrect serial number, inventor, and filing date. However, the examiner spoke with attorney of record, Max Petersen on 12/11/03 and the document submitted was correct and relevant to the present application. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 14-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuepper et al. USPN 5496298.

As to claim 14, Kuepper discloses a disposable absorbent garment **10**, comprising:

a chassis including at least a liquid-permeable bodyside liner **14**, an absorbent layer **16**, and a substantially liquid-impermeable outer cover **12**; a first seamless single-piece side panel **24** joining a first edge of a front portion **18** of the chassis to a first edge of a back portion **20** of the chassis; and a second seamless, single-piece side panel **24** joining a second edge of the front portion **18** of the chassis to a second edge of the back portion **20** of the chassis (Figures 1, 6, and 7).

As to claim 15, Kuepper discloses the first and second seamless side panels comprise an elastic material (col. 9, lines 23-35 and lines 45-55).

As to claim 16, Kuepper discloses the chassis and seamless side panels define a waist opening and first and second leg openings (Figure 7 and col. 3, lines 31-39).

As to claims 17-19, 22, and 23, these claims are directed to the process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different

process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)  
(citations omitted). MPEP 2113.

Kuepper, nevertheless, discloses the first and second side panels are bonded to the chassis by various methods such as:

- an adhesive (col. 3, lines 3-22), which is recited in claim 17,
- by thermal heat sealing (col. 3, lines 14-22), which is recited in claim 18,
- ultrasonic bonds, which is recited in claim 19, and
- by sewing, which the examiner interprets is equivalent to threaded stitch bonds (col. 3, lines 14-22), which is recited in claim 23.

As to claim 20, Kuepper discloses the edges **36** of the first and second side panels are at angles of about 90-135 degrees relative to a waistline **46** of the chassis (Figure 1).

As to claim 21, Kuepper discloses the angle of claim 20 is about 90-115 degrees (Figure 1).

As to claim 22, Kuepper discloses the first and second side panels are bonded to the chassis using thermal stitch bonds (col. 3, lines 14-22).

As to claim 24, Kuepper discloses the disposable absorbent garment of claim 14, comprises a diaper (col. 1, lines 9-10).

As to claim 25, Kuepper discloses the disposable absorbent garment of claim 14, comprises a child training pant (col. 1, lines 9-10).

As to claim 26, Kuepper discloses the disposable absorbent garment of claim 14, comprises an adult incontinence garment (col. 1, lines 9-10).

As to claim 27, and as indicated in the rejection of claim 14 above, Kuepper discloses the structure and materials, which read on the structure of the claimed disposable article. Based on the structural similarity between the claimed present invention and the article of Kuepper, the examiner has reasonable factual basis to conclude the absorbent article of Kuepper is also capable of performing the same function as the claimed article, specifically, capable of being used as a swim wear garment since applicant has not set forth any specific limitations required for the swim wear garment as compared to the requirements for the diaper or training pant. See MPEP 2112.

***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roe et al. USPN 5554145 and Heki et al. USPN 5906008 are cited to show disposable diapers with seamless elastomeric side panels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761

